

# HOUSE BILL REPORT

## SB 5599

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### As Passed House:

April 15, 2009

**Title:** An act relating to approving the entry of Washington into the agreement among the states to elect the president by national popular vote on the same terms and conditions as entered into by the states of Hawaii, Illinois, Maryland, and New Jersey.

**Brief Description:** Approving the entry of Washington into the agreement among the states to elect the president by national popular vote.

**Sponsors:** Senators McDermott, Oemig, Kohl-Welles, Pridemore, Marr, Brown, Tom, Kline, McAuliffe, Regala and Shin.

### Brief History:

#### Committee Activity:

State Government & Tribal Affairs: 3/26/09 [DP].

#### Floor Activity

Passed House: 4/15/09, 52-42.

### Brief Summary of Bill

- Authorizes Washington to enter into an interstate agreement to allocate the state's electoral votes for President and Vice President of the United States based on the national popular vote winner.
- Requires Washington to conduct a statewide popular election for President and Vice President of the United States and communicate the results of the election to other member states.
- Requires presidential elector certifying officials to certify the appointment of the presidential electors of Washington based on the national popular vote winner.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** Do pass. Signed by 5 members: Representatives Hunt, Chair; Appleton, Vice Chair; Flannigan, Hurst and Miloscia.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Armstrong, Ranking Minority Member; Alexander.

**Staff:** Tracey O'Brien (786-7196)

**Background:**

The President and Vice President of the United States are not elected by direct popular vote. Instead, the President and Vice President are elected by a group of 538 people who are known individually as "presidential electors" and collectively as the "Electoral College." Each political party nominates its own candidates for the position of presidential elector.

Article II, section 1 of the United States Constitution provides that "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress."

In 48 states the presidential candidate receiving the most votes is awarded all of the states' electoral votes. Two states, Maine (since 1972) and Nebraska (since 1992), use a congressional district system for allocating electoral votes. The states' authority to determine the manner of awarding their electoral votes is absolute and exclusive.

The presidential electors cast their votes for President and Vice President in mid-December in meetings held in the 50 state capitals and the District of Columbia. A presidential or vice-presidential candidate must win a majority of the electoral votes in order to be elected to office (270 out of 538 electoral votes). The U.S. House of Representatives chooses the President and the U.S. Senate chooses the Vice President if there is no majority. It is possible to win the presidency without winning the most popular votes nationwide. In fact, second-place candidates were elected in 2000, 1888, 1876, and 1824.

Legislation relating to the states' awarding electoral votes based on the national popular vote has been introduced in 48 states, and enacted in Hawaii, Illinois, Maryland, and New Jersey.

**Summary of Bill:**

Washington shall enter into an interstate agreement with any other states that have enacted, in substantially similar form, the "Agreement Among the States to Elect the President by National Popular Vote." Each member state of this agreement must conduct a statewide popular election for President and Vice President of the United States.

Manner of Appointing Presidential Electors in Member States.

- Before the presidential electors meet and vote, each member state must determine the number of votes cast for each presidential slate. The votes from each state will be added together to produce a national popular vote total.
- At least six days prior to the meeting and voting of presidential electors, each member state must communicate the final popular presidential vote to other member states.

- The presidential elector certifying official (official) of each member state must certify the appointment of the presidential electors based on the national popular vote winner.
- If there is a tie for the national popular vote winner, the official must certify the appointment of the elector slate based on the popular vote within the official's state.

Other Provisions.

- Any member state may withdraw from the agreement, except that any withdrawal occurring within six months before the end of a President's term does not become effective until a President or Vice President has been qualified to serve the next term.
- The chief executive of each state must notify all other member states when this agreement has been enacted or when the state has withdrawn.
- This agreement terminates if the electoral college is abolished.

The agreement is self-executing once states cumulatively possessing a majority of the electoral votes have enacted the agreement and the enactments have taken effect in each state.

A section addresses the agreement's contractual nature. As a result, it is the intent of the Legislature not to make any material changes so as to ensure its efficacy.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) When the U.S. Constitution was adopted, the states reserved the right to allocate Electoral College votes as each saw fit. This bill does not amend the U.S. Constitution; it merely revises how this state will allocate our Electoral College votes. A winner-take-all system was not what our Founding Fathers envisioned; in fact, only three states in the first presidential election used a winner-take-all allocation method. This change will involve more citizens in presidential campaigns. The current system forces candidates to focus only on a few states. In fact, two-thirds of the campaign spending and visits in the last election were focused only on five "swing" states. The Electoral College does not favor small states, but swing states. This bill will allow *all* voters to count in a presidential election.

(With concerns) The creation of the Electoral College was one of the few things that the Federalists and Non-Federalists agreed upon. The laws governing voter access and ballot access vary among the states; therefore, this bill does not create a national election. It is troublesome that there is no common decision maker or process to determine the national popular vote winner.

(Opposed) The United States is a constitutional republic, not a direct democracy. The Founding Fathers created a fair system to protect the minority from the tyranny of the majority. This bill does the opposite and will result in increased bullying and corruption. Washington's current system of winner-take-all works well. If this bill is enacted, future candidates will only focus on states with large populations. In addition, states do not have uniform ballot access and voter access laws. Therefore, not only do the candidate choices for President vary from state to state, but the laws regulating who can vote and when also vary. Some states have higher standards than others. This bill will also compound the problems with voting machines. By entering into this agreement, Washington will be engaging in an unconstitutional change in Electoral College elector's duties by giving a "chief election official" the power to tell the electors how to vote. Finally, this bill gives away Washington's sovereignty and takes power away from the Legislature.

**Persons Testifying:** (In support) Senator McDermott; prime sponsor; and Jeff Gombosky, National Popular Vote.

(Concerns) Trent England, Evergreen Freedom Foundation.

(Opposed) Julie Martinoli; Debbie Campbell; Matt Hamilton; Dan Goebel, Campaign for Liberty; and Ian McFall.

**Persons Signed In To Testify But Not Testifying:** None.